

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10705 OF 2014**

Shri Vishnu Krishna Dhadphale (deceased) through Shri Hemant Vishnu Dhadphale Vs. Competent Authority & District & Ors	..Petitioner ..Respondents
---	---

Mr. P. J. Thorat for the Petitioner
Mr. S. D. Rayrikar AGP for the Respondent No.1
Mr. Jayesh Kocheta for the Respondent No.2

CORAM : R. M. SAVANT, J.
DATE : 16th FEBRUARY, 2017

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 22-8-2014 passed by the Competent Authority and District Deputy Registrar, Co-operative Societies, Pune, by which order the application for deemed conveyance filed by the Respondent No.2 society came to be allowed and the deemed conveyance in respect of the lands mentioned in the certificate of the same day as also the undivided share in the road and common area came to be granted to the Respondent No.2 society.

2 The Petitioner herein is the original owner of the land in question being Survey No.20 Hissa No.1A/1+1B/1 bearing New Survey No.2/A/1 Someshwadi, Pashan, Pune admeasuring 1H, 37 Ares i.e. 3 Acres and 16 Gunthas. The original owner had executed a power of attorney dated 25-9-

1983 and Development Agreement dated 29-8-1984 in favour of one Sunanda B. Nadgauda who had entered into a partnership with one Madhav Venkatrao Nadgauda and Madhukar Shankar Narawade and they had constituted themselves in the firm known as Nadgauda Associates . The said Nadgauda Associates thereafter undertook the development of the land in question. The construction in the instant case was completed in the year 1998-1999. The said Nadgauda Associates entered into agreements for sale of the flats in the building which was constructed. The flat purchasers in the building constituted themselves in the Respondent No.2 society. The said flat purchasers agreements envisaged the conveyance of the land in question in favour of the society that would be constituted of the flat purchasers.

3 In view of the fact that the said obligation was not being fulfilled by the developers, the society had filed a complaint before the Consumer Redressal Forum seeking direction that the developers be directed to execute a conveyance in its favour. It seems that the District Consumer Forum at Pune had allowed the said complaint filed by the Respondent No.2 society by order dated 1-2-2010. The Petitioner herein who is the owner of the land in question has filed a Civil Suit in the Court of the Learned Civil Judge Senior Division, Pune for a declaration in respect of the Power of Attorney. The said Suit is numbered as Special Civil Suit No.25 of 1992. The reliefs in the said Suit were sought on the basis that the Power Of Attorney and the Development

Agreement were not registered documents. It is an undisputed position that the Petitioner herein failed to obtain any interim orders in the said Suit to stay the construction which was being put up by the said Nadgauda Associates . As indicated above in so far as the instant case is concerned, the said construction is completed in the year 1998-1999. The Respondent No.2 society was registered on 22-2-1999. In view of the fact that the conveyance was not being executed either by the developers or by the owners, the Respondent No.2 society was constrained to file an application under Section 11 of the Maharashtra Ownership of Flats Act 1971 (for short the said Act) for grant of unilateral deemed conveyance. The said application was filed before the Competent Authority and the District Deputy Registrar, Pune. The said application was accompanied by the flat purchasers agreements, the certificate issued by the Architect and other documents which the Respondent No.2 society found to be relevant for the purpose of the said application.

4 The said application was opposed to on behalf of the Petitioner herein who filed his reply. In the said reply, it was the case of the Petitioner that the Respondent No.2 society was not entitled to deemed conveyance as the developer had no right to construct upon the land in question as the Power of Attorney and the Development Agreement were terminated and the Suit between the owner and the developers was pending in the Civil Court. It was also sought to be contended in the said reply that there was no privity of

contract between the Respondent No.2 society and the owner i.e. the Petitioner herein. In so far as the developers are concerned, they did not remain present though served and therefore the matter proceeded exparte against the developers.

5 The Competent Authority and the District Deputy Registrar considered the said application and as indicated above has by the impugned order dated 22-8-2014 has allowed the said application. The gist of the reasoning of the Competent Authority is that in terms of Rule 9 of the Rules, the developers were obliged to execute the conveyance in favour of the Respondent No.2 society within four months of its registration. The Competent Authority adverted to the documents which were filed on behalf of the Respondent No.2 society amongst which as indicated above was the flat purchasers agreement, certificate issued by the architect in respect of the claim made in the application for deemed conveyance vis-a-vis the land and structure of the building of the Respondent No.2 society. Upon such consideration, the Competent Authority held that the Respondent No.2 would be entitled to the grant of unilateral deemed conveyance under Section 11 of the said Act. The Competent Authority and the District Deputy Registrar held that the dispute between the owner and the developers which is pending in the Civil Court would not be an impediment to allow the application for deemed conveyance. The Competent Authority has further observed that the

instant order would not affect any order passed by any other Competent Court.

6 The Learned Counsel appearing for the Petitioner Mr. Thorat would seek to reiterate the case of the Petitioner which was urged before the Competent Authority. The Learned Counsel would seek to highlight the fact that the Civil Suit is pending between the owners i.e. the Petitioner and the developers in which a declaration is sought in respect of the Power of Attorney. It was the submission of the Learned Counsel that no right was created in favour of the developers by the said Power of Attorney and the Development Agreement as both were unregistered. It was also the submission of the Learned Counsel that there is no privity of contract between the Petitioner and the Respondent No.2 so as to entitle the Respondent No.2 to file an application for deemed conveyance against the Petitioner.

7 Per contra the Learned Counsel appearing for the Respondent No.2 society Mr. Patwardhan and the Learned AGP Mr. Rayrikar would support the impugned orders. It was the submission of the Learned Counsel that the Petitioner society has been waiting for long to get the property conveyed in its favour though it has been registered as long back as in the year 1999. It was also the submission of the Learned Counsel that Rule 9 of the Rules casts an obligation on the developer to convey the property within 4 months of the registration of the society and in terms of Section 11 thereof if the same is not

done, then the society is entitled to file an application for unilateral deemed conveyance.

8 Having heard the Learned Counsel for the parties, I have considered the rival contentions. As indicated above, the cause for causing the construction was the Power of Attorney and the Development Agreement executed in favour of the said Sunanda Nadgauda which has resulted in the construction being put up by the said Nadgauda Associates of which the said Sunanda Nadgauda is a partner. Hence by executing the Power of Attorney and the Development Agreement, the Petitioner herein can said to have caused the construction as contemplated under the said Act. The Petitioner and the developers can therefore be said to be the promoters / developers in so far as the MOFA are concerned. If that be so, they were obligated by Rule 9 to convey the land in question to the Respondent No.2 society within 4 months of the registration of the Respondent No.2 society. As indicated above, the Respondent No.2 has been registered as long back as on 22-2-1999. However, the Respondent No.2 society was waiting for the conveyance being executed, and was ultimately required to file the application invoking Section 11. In the light of the fact that the Petitioner would qualify as promoters / developers within the meaning of the said Act. The contention of the Learned Counsel for the Petitioner that there was no privity of contract cannot be accepted. In so far as the second contention is concerned, it is well settled that the interse

dispute between the developers and the owners would not impinge upon the right of the society which has been constituted of the flat purchasers to deemed conveyance. In the instant case, as indicated above though a Civil Suit was filed by the Petitioner herein, he has failed to obtain any relief as a consequence of which the development on site proceeded resulting in the building of the Respondent No.2 being constructed and the flats therein being sold to the flat purchasers who have constituted themselves in the Respondent No.2 society. The Respondent No.2 society cannot be deprived of the deemed conveyance on account of some interse dispute between the owner and the developers.

9 In my view therefore, the impugned order dated 22-8-2014 does not suffer from any error of jurisdiction or any other illegality or infirmity for this court to interfere in its writ jurisdiction under Article 227 of the Constitution of India. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]